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In The

Supreme Court of the United States

DONNA RAE EGELHOFF,

Petitioner,

v.

SAMANTHA EGELHOFF, a Minor, by and through Her Natural Parent Kate Breiner, and DAVID EGELHOFF,

Respondents.

On Writ Of Certiorari To The Supreme Court Of Washington

BRIEF OF THE WESTERN CONFERENCE OF TEAMSTERS PENSION TRUST FUND AS AMICUS CURIAE IN SUPPORT OF PETITIONER

RUSSELL J. REID
MICHAEL R. MCCARTHY
DAVIES ROBERTS & REID
101 Elliot Avenue West,
Suite 550
Seattle, WA 98119
(206) 285-3610

ROBERT S. UNGER
Counsel of Record
CHARLES A. STORKE
NICOLE A. DILLER
JENNIFER M. PELTZ
TRUCKER ♦ HUSS, APC
120 Montgomery Street,
23rd Floor
San Francisco, CA 94104
(415) 788-3111

Counsel for the Western Conference of Teamsters Pension Trust Fund as Amicus Curiae in Support of Petitioner

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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I. STATEMENT OF INTEREST OF THE WESTERN CONFERENCE OF TEAMSTERS PENSION TRUST FUND

The Western Conference of Teamsters Pension Trust Fund (the "WCT Fund")[1] submits this brief to urge the Court to reverse the decision of the Washington Supreme Court in the matter of *Egelhoff v. Egelhoff*.[2]

The WCT Fund is a jointly administered trust maintained pursuant to Section 302(c) of the Labor Management Relations Act, 20 U.S.C. § 186(c). The WCT Fund administers the Western Conference of Teamsters Pension Plan (the "WCT Plan"), an employee pension benefit plan under Section 3(2) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1002(2), and a "multiemployer plan" as defined in Section 3(37) of ERISA, 29 U.S.C. § 1002(37).

The WCT Plan has participating employers located in thirteen western states[3] and, as of the end of last year, over 239,650 active plan participants. In addition, the WCT Plan has nearly 300,000 inactive participants and beneficiaries spread amongst all fifty states, the District

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[1] To avoid duplication of argument, counsel for the WCT Fund exchanged drafts of briefs with Petitioner and some amici in the course of preparing this brief. While having considered the comments of those sources, counsel for the WCT Fund were the sole authors of this brief and no person or entity other than the WCT Fund made a monetary contribution to the brief's preparation or submission. As of July 10, 2000, counsel for all parties gave their blanket consent to the filing of amicus briefs in this matter.

[2] 989 P.2d 80 (1999).

[3] Those thirteen states are Alaska, Arizona, California, Colorado, Idaho, Hawaii, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming.

of Columbia, several U.S. territories, and foreign countries.

The WCT Fund has paid over 23,000 death benefit claims in the last three years.[4] The terms of the WCT Plan provide that the WCT Fund will pay these claims in accordance with a beneficiary designation card on file, a designation contained in an application for retirement benefits, or, if neither exists, pursuant to the beneficiary preference provisions of the WCT Plan. Thus, the WCT Plan administrators have a clear method for paying death benefits and complying with ERISA's mandate that a plan be administered according to the terms of its governing documents and instruments.

Given the WCT Plan's nationwide provision of benefits, the WCT Fund has a great stake in the outcome of *Egelhoff v. Egelhoff*. In particular, *Egelhoff* held that the Washington Legislature could nullify an ERISA-governed plan participant's beneficiary designation, despite a conflict between the terms of the Washington law and an employee benefit plan. If allowed to stand, *Egelhoff* will impede the ability of the WCT Fund to administer the WCT Plan.

II. SUMMARY OF THE ARGUMENT

It is widely recognized that one of Congress' central aims in enacting ERISA was to provide a uniform body of federal law to regulate employee benefit plans. A confusing patchwork of conflicting statutory and common law directives relating to the treatment, after divorce, of a spousal beneficiary designation made by a plan participant during marriage threatens that goal. The state statute pivotal to this case, Washington's Revised Code

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[4] Since the inception of the Plan, there have been 151,702 claims for payment of death benefits.

Section 11.07.010, is but one example. It generally provides that a spousal beneficiary designation becomes ineffective upon divorce, and directs ERISA plan administrators to treat the former spouse as if he or she had predeceased the participant.

Section 11.07.010 and similar statutes are apparently based on the assumption that plan participants will not remember to modify their beneficiary designations after divorce, and that it is appropriate for state legislatures to do it for them. The WCT Fund questions both premises. The WCT Fund believes that the concerns that form the basis for statutes like Washington Revised Code Section 11.07.010 can be adequately addressed by simply urging participants to change their beneficiary designations upon divorce.

California, for example, has enacted a statute that requires courts, upon the issuance of a divorce decree, to remind plan participants to change their beneficiary designations following divorce if they so desire. This law does not require any modification of existing employee benefit plan administration practices. In addition, it permits participants to control the fate of their benefits, and does not nullify beneficiary designations that the participants may have, in fact, intended. The WCT Fund submits that the California approach embodies an uncomplicated solution to the concern at which the Washington statute is aimed.

In any event, laws purporting to invalidate beneficiary designations violate ERISA's substantive provisions.[5] Among other things, ERISA commands the fiduciaries of

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[5] Such state laws also impermissibly relate to, and seek to govern the administration of, employee benefit plans, thereby falling within ERISA's preemptive sweep. *See* ERISA § 514, 29 U.S.C. § 1144. The WCT Fund does not brief the preemption issues here, presuming that the parties' briefs will address this topic at length.

an employee benefit plan to administer the plan in accordance with the terms of the documents and instruments governing it. ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D). Statutes directing a fiduciary to provide benefits to someone other than a designated beneficiary fly in the face of this requirement by requiring the fiduciary to overlook both the beneficiary designation and the distribution procedures set forth in the plan.

Furthermore, requiring plan fiduciaries to distribute a participant's interest according to rules established by varying jurisdictions would increase the complexity of plan administration, thereby making day-to-day administration more costly. Particularly in the case of multi-state plans like the WCT Plan, regulating the distribution of benefits in a manner that varies depending on which jurisdiction governs that distribution would preclude efficient administration of employee benefit plans. Jurisdictions' different legal requirements would require the management of a single plan according to inconsistent rules. Substantive regional variances would present continual choice of law dilemmas every time claimants of different jurisdictions compete for the same benefits. These issues would require an increased role from plan counsel, adding to the costs of plan administration and clogging courts with ever more frequent interpleader actions. There are only two methods of paying these additional costs: either employers absorb them as the price of electing to provide benefit plans, or, participants bear them in the form of reduced benefits and plan reserves.

Given ERISA's mandate to administer plans in accordance with their governing documents and instruments, "federal common law" need not, and should not, be fashioned to address the impact of divorce on beneficiary designations, particularly since efforts to create federal

common law have differed from state to state resulting in anything but a uniform federal law.

III. ARGUMENT

A. The Court Should Uphold Congress' Mandate to Administer Benefit Plans Pursuant to a Uniform Body of Federal Law

1. A Review of the Status of the Law Among the Fifty States Reveals That Washington's Revised Code Section 11.07.010 Only Adds to Conflict

While Respondents downplay the prevalence of conflicting laws concerning the validity of an ERISA plan participant's beneficiary designation,[6] a survey of the status of the law within the fifty states reveals that the law on the books differs greatly from state to state. Including Washington, at least seventeen states have enacted statutes relating to the impact of divorce on beneficiary designations made during marriage. Numerous state and federal courts in those jurisdictions and others have grappled with the issue, often leading to yet further directives. In the end, fiduciaries of multi-state plans currently face up to a dozen different approaches to the situation, a number that is likely to increase if state regulation of beneficiary designations is approved by this Court.

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[6] *See* Respondents' Brief in Opposition to Petition for Writ of Certiorari at pages 5 and 6.

a. Eight states have enacted their own statutes directing how plan fiduciaries should treat spousal beneficiary designations

A number of states have enacted statutes regarding the treatment of spousal beneficiary designations upon divorce. The statute central to this case, Washington's Revised Code Section 11.07.010, purports to require plan fiduciaries to treat the designated beneficiary as if he or she had predeceased the former spouse, subject to certain exceptions.[7] Ohio, Oklahoma, Pennsylvania, Utah, and Virginia have enacted similar laws. *See* OHIO REV. CODE § 1339.63 (2000); OKLA. STAT. tit. 15, § 178 (1999); 20 PA. CONS. STAT. § 6111.2 (1999); UTAH CODE § 30-3-7.5 (1999); VA. CODE §§ 20-111.1 and 38.2-305 (2000).

Texas and Missouri each take a different approach. Texas has two statutes, both of which require plan fiduciaries to treat the beneficiary designation of a spouse as ineffective, and to instead pay the proceeds to either the contingent beneficiary or, if no such beneficiary exists, the participant's estate. TEX. FAMILY CODE §§ 9.301 and 9.302 (2000). In so doing, Texas' legislature has not only invalidated the participant's beneficiary designation, but has also overridden benefit plans' preference schemes, delineating the distribution of benefits where the participant leaves no validly designated beneficiary.

Unlike Texas, Missouri revokes beneficiary designations upon divorce, but does not name the alternate recipient, instead requiring only that the former spouse be

[7] The main exception permits divorce decrees to explicitly provide for a spousal beneficiary designation, in which case the designation remains valid. This exception, and others like it in similar statutes, would require plan administrators to analyze the precise language of divorce judgments to ensure compliance with the statute's stated exceptions.

treated as if he or she disclaimed the designation. MO. REV. STAT. § 461.051 (1999).

The seemingly small difference between Texas' and Missouri's statutes may mandate diverse results in a single factual scenario. Under the WCT Plan, if no validly designated beneficiary survives the participant, benefits must be paid according to the WCT Plan's preference scheme – a system in which the estate of the participant ranks last in order of preference.[8] However, observing Texas' statute would result in the participant's estate being the first resort where there exists no contingent beneficiary designation. Thus, whether a statute defers to a plan's preference system (like Missouri's) or identifies the alternate disposition of the assets (like Texas') can alter the recipient of the benefits. As a result, such provisions may mandate distributions contrary to the intent and expectations of the plan sponsors and participants. In any event, the divergent state laws will complicate plan administration.

b. Ten states have adopted Uniform Probate Code Section 2-804, but are divided on the application of several substantive provisions

While the Uniform Probate Code (the "UPC") was designed years ago in an effort to create uniformity among the states on the treatment of certain assets upon death, only a fraction of the states have enacted it. With only one-fifth of the states having adopted some form of

[8] The WCT Plan's preference system provides that, in the event a vested participant dies with no valid beneficiary designation on file, the participant's beneficiary will be the survivor(s) in the first class among the following: 1) surviving spouse; 2) children; 3) parents; 4) siblings; and 5) estate.

UPC Section 2-804, to denominate it as a "uniform" act is a misnomer. Moreover, where adopted, state legislatures have almost invariably modified the model provisions.

The portion of the UPC that relates to the issue before the Court is found in Article 2 at Section 804. It provides that, unless stated otherwise in the parties' dissolution judgment or the "governing instrument" itself, divorce will cause the former spouse to be treated as if he or she has disclaimed the beneficiary designation. UNIF. PROBATE CODE § 2-804 (1998). Only nine states have enacted this section of the UPC or some form of it, though Wisconsin has enacted a virtually identical statute, while not referencing the UPC.

While the model statute appears straightforward, the ten states that have adopted it have done so in no fewer than four different ways. In short, the states adopting Section 2-804 have ensured that the provisions of the UPC are, in reality, anything but uniform.

The core difference between the various enactments centers on a subparagraph of the UPC, Section 2-804(h)(2). Section 2-804(h)(2) directs that, in the event that a federal law is found to preempt the UPC rules for the disposition of specified assets (including employee benefit plan benefits), the party entitled to receive an asset under the federal law must pay its value "to the person who would have been entitled to it were this section or part of this section not preempted." UNIF. PROBATE CODE § 2-804(h)(2).

Michigan, South Dakota, Colorado, and New Mexico have adopted the subparagraph of Section 2-804 on preemption as set forth in the UPC, while Alaska, Arizona, and Wisconsin have all adopted the bulk of Section 2-804 without including the preemption paragraph. North Dakota and Montana, in contrast, adopted a modified version of Section 2-804(h)(2), specifically excepting

ERISA from its ambit. Finally, Utah stands on its own; it enacted both Section 2-804 (including Section 2-804(h)(2)), as well as a separate statute directing plan fiduciaries to treat a designated former spouse as predeceasing the plan participant.

c. State and federal courts impose yet other rules

In addition to these myriad statutory requirements imposing diverse obligations on plan fiduciaries, a number of courts have enunciated different requirements, sometimes conflicting even with statutory provisions enacted in the geographic region in which the court sits.[9]

Generally speaking, state courts considering this issue base their decisions on contract and insurance principles, usually finding that divorce alone does not revoke

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[9] For instance, in *Metropolitan Life Ins. Co. v. Hanslip*, 939 F.2d 904 (10th Cir. 1991), the Tenth Circuit held that ERISA preempts an Oklahoma statute similar to Washington Revised Code Section 11.07.010. However, the fact that the Oklahoma statute, Title 15, Section 178, remains on the books creates a distinct possibility that an Oklahoma state court may find the statute is not preempted or choose to fashion "federal common law." Thus, a plan administrator in Oklahoma faces potential liability for following either approach. Administrators in some other jurisdictions are similarly beset. *Compare Guardian Life Ins. Co. of America v. Madole*, 58 F. Supp. 2d 26 (D.D.C. 1999) (ERISA preempts the District's law purporting to regulate the designation of a life insurance policy), *with Critchell v. Critchell*, 746 A.2d 282 (D.C. 2000) (ERISA does not preempt the District's marital property law relating to a spouse's waiver of interest in pension plan). *Compare also* Pennsylvania's statute, Title 20, Section 6111.2 (divorce revokes beneficiary designations made during marriage in favor of spouse), *with* the common law decision *Metropolitan Life Ins. Co. v. Walsh*, 892 F. Supp. 671 (W.D. Pa. 1995) (ERISA preempts state law purporting to regulate beneficiary designation).

a spousal beneficiary designation "absent convincing evidence that [a property settlement] was intended to deprive the named beneficiary of that interest." *Estate of Bowden v. Aldridge*, 595 A.2d 396, 396 (D.C. 1991); *see also Frederick v. Frederick*, 687 A.2d 711 (N.H. 1996); *Duncan v. Investors Diversified Services, Inc.*, 330 S.E.2d 295, 296 (S.C. 1985). An exception is New Jersey, where courts have held that a marital settlement agreement with a mutual release of all claims creates a presumption that the parties waived their rights under pre-existing designations. *See In re Estate of Lanken*, 676 A.2d 190 (N.J. Super. Ct. Ch. Div. 1996).

While some federal courts agree with the state common law approach, others do not. The Sixth Circuit, for instance, has held that ERISA Section 404(a)(1)(D) – which requires fiduciaries to manage plans in accordance with its governing documents and instruments – itself supplies the rule of law and mandates that fiduciaries pay the benefits to the beneficiary designated by the participant. *See Metropolitan Life Ins. Co. v. Pressley*, 82 F.3d 126, 130 (6th Cir. 1996); *McMillan v. Parrott*, 913 F.2d 310, 311 (6th Cir. 1990). The Tenth Circuit is in accord, holding in *Metropolitan Life Ins. Co. v. Hanslip*, 939 F.2d 904 (10th Cir. 1991), that ERISA preempts an Oklahoma statute purporting to require plan fiduciaries to treat a designated former spouse as predeceasing the participant, and instead requires payment of the benefits to the designated beneficiary. *See also Metropolitan Life Ins. Co. v. Walsh*, 892 F. Supp. 671 (W.D. Pa. 1995). *But see Metropolitan Life Ins. Co. v. Pearson*, 848 F. Supp. 1326 (E.D. Mich. 1994) (holding that ERISA does not preempt Michigan family law and applying the Michigan revocation-by-divorce statute).

Yet another approach adopted by some courts is to first find that ERISA preempts state law, but to then look

to state statutes to fashion federal common law rather than finding the answer in ERISA itself. *See Brandon v. Travelers Insurance Co.*, 18 F.3d 1321, 1326 (5th Cir. 1994), (where the federal court looked to a Texas statute to fashion federal common law, but declined to adopt the state statute on a "wholesale" basis, instead modifying "the adoption of state law to require that any waiver be voluntary and in good faith") and *Manning v. Hayes*, 212 F.3d 866 (5th Cir. 2000) (same). *But see Emmens v. Johnson*, 923 S.W.2d 705, 712 (Tex. App. 1996) (refusing to follow the *Brandon* "federal common law" and instead adopting Texas statutory law and calling it "federal common law").[10]

As discussed below, these many conflicting directives have created the precise situation that Congress, in enacting ERISA, sought to prevent: the development of different substantive standards applicable to the same conduct. As this Court held in *Ingersoll-Rand Co. v. McClendon*, "[s]uch an outcome is fundamentally at odds with the goal of uniformity that Congress sought to implement."[11] 498 U.S. 133, 142 (1990).

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[10] Thus, while both state and federal courts in Texas purport to apply "federal common law," the test used is different, such that who will receive benefits might well turn on whether a case is filed in a state or federal court.

[11] While *Ingersoll-Rand* focused on potential differences in requirements governing employer conduct, the issue here is even more central to ERISA – a plan administrator's ability to ensure the provision of benefits to participants and beneficiaries in accordance with the instruments controlling the plan. *See, e.g., Boggs v. Boggs*, 520 U.S. 833, 845 (1997) (ERISA's "principal object . . . is to protect plan participants and beneficiaries"); *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 90 (1983) ("ERISA is a comprehensive statute designed to promote the interests of employees and their beneficiaries in employee benefit plans") (citations omitted).

d. California reminds divorcing parties that they may modify their beneficiary designations

Instead of adding to the conflicting directives, California has chosen to take aim at the source of the issue – the plan participant. California's mandatory form Judgment of Dissolution instructs parties to review any beneficiary designations to determine if changes should be made. CAL. FAM. CODE § 2024(b) (2000). Thus, instead of enacting a statute regulating the treatment of existing spousal beneficiary designations after divorce, California attempts to overcome any possibility of distributing benefits to an unintended beneficiary by apprising participants that they may modify designations if they wish.

The WCT Fund believes that the California method of addressing the concern of a potentially unwanted disposition of plan assets is the best approach. Such a technique neither infringes on ERISA's uniform regulation of employee benefit plans nor imposes any additional burden on plan administrators. This approach also ensures that plan participants who wish to modify designations are reminded to do so, but does not invalidate what may be a considered choice by a participant to retain a former designation.

2. As This Court Has Recognized Many Times over, Congress Enacted ERISA to Permit Plan Administration Under a Uniform Body of Federal Law

This Court has repeatedly confirmed that Congress enacted ERISA to ensure that plan sponsors and administrators could administer employee benefit plans in accordance with a uniform body of governing law. *See, e.g., Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 142 (1990) ("Section 514(a) was intended to ensure that plans and

plan sponsors would be subject to a uniform body of benefits law"); *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 105 (1983) ("[b]y establishing benefit plan regulation 'as exclusively a federal concern,' Congress minimized the need for interstate employers to administer their plans differently in each State in which they have employees") (citations omitted); *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 11 (1987) ("Congress intended preemption to afford employers the advantages of a uniform set of administrative procedures governed by a single set of regulations"); *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523 (1981) (ERISA's preemption clause was designed to "establish pension plan regulation as exclusively a federal concern"). Congress' aim was geared towards minimizing "the administrative and financial burden of complying with conflicting directives among States or between States and the Federal Government . . . , [and preventing] the potential for conflict in substantive law . . . requiring the tailoring of plans and employer conduct to the peculiarities of the law of each jurisdiction." *Ingersoll-Rand Co. v. McClendon*, 498 U.S. at 142.

Legislative history underscores the importance of the federalization of benefit regulation to the sponsors of ERISA. In introducing the bill to Congress, sponsors described the "crowning achievement" of the Act as its assurance of consistent administration of employee benefit plans across the country. 120 CONG. REC. 29197 (1974). As Representative Dent of the House of Representatives put it, preemption "round[s] out the protection afforded participants by eliminating the threat of conflicting and inconsistent state and local regulation." *Id.*; *see also id.* at 29933 ("the substantive and enforcement provisions

. . . are intended to preempt the field for federal regulations, thus eliminating the threat of conflicting or inconsistent state and local regulation of employee benefit plans").

Against this backdrop, this Court has concluded that "the basic thrust of the pre-emption clause, then, was to avoid a multiplicity of regulation in order to permit the nationally uniform administration of employee benefit plans." *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 657 (1995). To achieve this end, ERISA requires the preemption of all "state laws that mandate[ ] employee benefit structures or their administration." *Id.* at 658.

In this case, upholding the Washington legislature's regulation of the validity of beneficiary designations would undermine ERISA's aim to create a single, uniform body of law governing the administration of employee benefit plans. The effect would be to subject plan sponsors to laws varying from locale to locale. Observing the various laws would, in turn, require plan fiduciaries to engage in complex, time-consuming efforts to determine the distribution mandated by the law at issue.[12] Even setting aside cost considerations, such a scheme proves essentially unworkable for multi-state plans. As discussed below, a patchwork of laws purporting to govern

[12] Although the WCT Fund reviewed the laws of the fifty states in connection with this brief, that undertaking proved to be both difficult and expensive. While the WCT Fund had the resources to enable it to do so, many of the problems identified in this brief are not limited to large trusts. Small trusts, whose plans are often administered by outside consultants and secretaries, do not have the tools to locate, interpret and apply the laws of every state to which participants or beneficiaries may relocate.

beneficiary designations would subject fiduciaries to conflicting obligations – sometimes even with regard to the same benefit payment – exposing the plan to potential liability regardless of the course chosen by its administrator.

B. Plan Administrators Have a Compelling Need for Uniform Administration of Benefit Claims in Accordance with Beneficiary Designations and Plan Provisions

The current hodgepodge of legal requirements varying from state to state threatens to require the administrator of a multi-state benefit plan to manage the plan according to an assortment of requirements.[13]

1. Complying with Varying State Laws Would Significantly Complicate the Distribution of Death Benefits

Currently, the distribution of death benefits under the WCT Plan is a relatively simple process. For cases in

[13] While plan administrators currently follow the terms of Qualified Domestic Relations Orders ("QDROs") issued by state courts, ERISA Section 206(d)(3), 29 U.S.C. § 1056(d)(3), sets forth a single, uniform set of requirements for such orders. Those qualification requirements are generally easy to ascertain, making compliance with QDROs far easier than compliance with varying beneficiary designation laws. One of the difficulties in trying to follow the varying state laws is that the plan administrator will frequently be forced to prove the existence of a negative – that the participant was not a party to a divorce. Proving any negative is inherently fraught with difficulty. Here, the difficulty is particularly acute because a plan administrator would be hard pressed to independently confirm a participant's marital history. QDROs, on the other hand, do not present this problem because they must be served on the employee benefit plans to which they relate.

which the WCT Fund has a beneficiary designation card on file at the time of the participant's death, most death benefits are processed in the following three simple steps:

- One or more claimants send the WCT Fund an application for the death benefits.
- The WCT Fund determines which claimant is the participant's designated beneficiary by asking the claimant(s) to produce birth certificates or other identity records.
- The WCT Fund pays benefits to the designated beneficiary.

If this Court condones state regulation of the validity of a participant's beneficiary designation, the processing of death benefits will be significantly more complex. At a rate of over 7,000 applications per year,[14] the WCT Plan's administrators will need to undertake several additional steps to determine the proper recipient of the participant's death benefits. The distribution process would include:

- One or more claimants would send the WCT Fund an application for the death benefits.
- The WCT Fund would determine which claimant is the participant's designated beneficiary by asking the claimant(s) to produce birth certificates or other identity records.
- The WCT Fund would query each claimant whether that claimant, or any other claimant, was ever married to the participant, and if so, whether the marriage terminated in divorce.
- Where the participant was a party to a divorce, the WCT Fund would obtain a copy of the divorce decree and any related orders or agreements.

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[14] In the past three years alone, beneficiaries submitted over 23,000 claims for death benefits under the WCT Plan.

- The WCT Plan's counsel would determine what jurisdiction governs the claim and research, or update research, on the applicable law to determine the effect of divorce on the participant's beneficiary designation. (If counsel cannot make a certain determination of which jurisdiction controls, the WCT Fund would file an interpleader action.)
- Depending on the jurisdiction, the WCT Fund would evaluate whether the divorce documents evidence a clear and convincing waiver by the former spouse of his or her rights as the designated beneficiary. (If the existence of waiver is ambiguous, the WCT Fund would file an interpleader action.)
- The WCT Fund would determine whether the beneficiary designation remains effective under applicable state law or federal common law. (If the validity of the beneficiary designation is ambiguous, the WCT Fund would file an interpleader action.) If the beneficiary designation is valid, the WCT Fund pays the death benefit.
- If the applicable law invalidates the designation, the WCT Fund would determine what alternate disposition of the benefits the governing law requires. (If the WCT Fund cannot determine the alternate disposition with certainty, the Fund would file an interpleader action.) If the statute clearly identifies the alternate disposition of the death benefits, the WCT Fund would pay the benefits accordingly.

2. In Many Instances, Plan Administrators Will Be Unable to Determine the Controlling Law

Unfortunately, many of the steps required for a distribution pursuant to state laws would entail determinations that would often be difficult, if not impossible, for a plan administrator to make with certainty. For example,

when potential claimants reside in different jurisdictions or where the participant divorced in one state and died in another, resolution of the choice of law issues will be extremely complex.

Determining the scope and requirements of the laws can pose additional hurdles. For instance, Washington Revised Code Section 11.07.010 has been amended twice since its enactment in 1993 and, while the Washington Supreme Court found that the amendments were not relevant to this case, that conclusion requires a complicated legal analysis. Requiring such analysis would impose undue burden and expense on ERISA plans covering residents of multiple states. Worse, the ambiguities in such laws make a totally risk-free determination impossible.[15]

Beyond the problems caused by jurisdictions employing different tests to determine the impact of divorce

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[15] For example, upon reading amended Washington Revised Code Section 11.07.010(2)(a), which applies only to "nonprobate assets," the plan's counsel must make a threshold determination of whether benefits under the plan constitute nonprobate assets subject to the statute's reach. The Washington Code, however, contains three different versions of this critical definition, two of which have been repeatedly amended in the seven years since the enactment of Section 11.07.010. *See* WASH. REV. CODE § 11.07.010(5); WASH. REV. CODE § 11.02.005(15); and WASH. REV. CODE § 11.11.010(7)(a) and (b). One of these definitions, Section 11.07.010(5), limits the employee benefit plan assets within its scope to those payable pursuant to a "payable-on-death provision of a life insurance policy, employee benefit plan, annuity or similar contract, or individual retirement account. . . . " The inclusion of Egelhoff's 401(k) distribution does not neatly fall into the denotation of a "payable-on-death provision," presenting the plan administrator with a judgment call.

upon a beneficiary designation, the situation is exacerbated by courts' consideration of the parties' underlying relationship in assessing the pivotal issues. Courts which have engaged in such subjective analyses make clear that no plan administrator can reliably predict who is entitled to receive plan benefits.

For example, in *Mohamed v. Kerr*, 53 F.3d 911 (8th Cir. 1995), the Eighth Circuit explained that a property settlement agreement may effectively revoke a beneficiary designation, provided the agreement specifically divests the former spouse's rights as a plan beneficiary. However, having announced that rule, *Mohamed* examined not only the terms of the divorce agreement, but also the facts surrounding the divorce, finding the facts "especially compelling." *Id.* at 916. *Mohamed* notes that the former wife (and designated beneficiary) left her husband as a result of his being diagnosed with Alzheimer's disease. "Once [the husband] was diagnosed with the disease, [the wife] could not get away fast enough, and she never looked back. We do not believe it is putting too fine a point on it to say that she abandoned him to his illness." *Id. Mohamed* then holds that the wife had waived any claim she might have had to plan benefits. *Id.*

In contrast to *Mohamed* is *National Automobile Dealers and Associates Retirement Trust v. Arbeitman*, 89 F.3d 496 (8th Cir. 1996). *Arbeitman* acknowledged that the language in the divorce agreement before it was similar to that in *Mohamed*. *Arbeitman*, 89 F.3d at 501. However, equitable considerations led to a different result. In particular, *Arbeitman* noted that the husband and wife "maintained an amicable relationship" and that the husband paid more spousal and child support than he was legally obligated to provide. *Id.* The Eighth Circuit describes this as a "vastly different situation than we faced in *Mohamed*," and held that the divorce agreement did not

waive the wife's rights as the designated plan beneficiary. *Id.*

As *Mohamed* and *Arbeitman* demonstrate, regardless of whether one believes the respective decisions correctly balanced the equities and circumstances in the two cases, such a subjective approach requires a plan administrator to do more than research the law. The administrator must also conduct an investigation of the facts and circumstances surrounding a divorce. This makes efficient plan administration impossible.

Where resolution of a particular issue is ambiguous, actions taken by the administrator would expose a plan to a risk of having to pay the benefit to more than one person, thereby making it prudent to interplead the matter and have a court resolve the issue. Filing interpleader lawsuits, however, is not a panacea. While attorneys' fees are ostensibly available to a plaintiff initiating an interpleader suit,[16] in cases involving a relatively small benefit, the recovery of attorneys' fees from the stake could consume the entire benefit. As a practical matter, the plan administrator may be required to charge the expenses to the plan or the plan sponsor rather than recover them from the benefit. In addition, interpleader lawsuits require the claimants to retain counsel, creating additional expenses that may dwarf the benefit at issue. In the end, filing an interpleader lawsuit can, in effect, sacrifice the contested benefit.

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[16] Courts have discretion to award attorney fees to a disinterested stakeholder in an interpleader action under their inherent equitable powers. *See, e.g., Abex Corp. v. Ski's Enterprises, Inc.*, 748 F.2d 513, 516 (9th Cir. 1984); *Bank One, Texas, N.A. v. Taylor*, 970 F.2d 16, 22 (5th Cir. 1992).

3. Complying with State Regulation of Beneficiary Designations Is Costly

As the discussion above reflects, if ERISA plan administrators are put to the task of having to examine state laws whenever making a distribution, they will routinely need to hire legal counsel to locate and interpret these statutes and file interpleader suits.

Only two choices exist to fund the changes: either employers bear the brunt of the increased costs of administering benefit plans, or the additional expenses will be borne by the plan's participants and beneficiaries in the form of reduced benefits and/or lowered plan reserves. To the extent that the employers are saddled with the additional costs, those increases may well "lead those employers with existing plans to reduce benefits, and those without such plans to refrain from adopting them." *Estate of Altobelli v. International Business Machines Corp.*, 77 F.3d 78, 83 (4th Cir. 1996) (Wilkinson, C.J., dissenting) (citing *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 11 (1987)).

In addition to its financial costs, a state's usurpation of participants' rights to designate beneficiaries also reduces participants' and beneficiaries' certainty as to their rights under the plan. As this Court held in *Boggs v. Boggs*, the "assets of a plan, again with certain exceptions, are 'held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan.' " 520 U.S. 833, 845 (1997) (quoting ERISA § 403(c)(1), 29 U.S.C. § 1103(c)(1)). Upholding Section 11.07.010 and statutes like it would preclude the fiduciary from meeting that obligation by requiring the distribution of benefits to someone other than a plan participant or designated beneficiary.

Moreover, disregarding a participant's beneficiary designation violates ERISA Section 404(a)(1)(D)'s mandate to administer a plan in accordance with its governing documents and instruments.[17] Congress required adherence to the governing documents in order to ensure that participants and beneficiaries can ascertain their benefit entitlements from a centralized source. In essence, Congress designed ERISA with the "statutory goals of efficiency in administration and certainty in expectations" in mind. *Estate of Altobelli v. International Business Machines Corp.*, 77 F.3d 78, 82-83 (4th Cir. 1996) (Wilkinson, C. J., dissenting).[18]

C. Given That ERISA Mandates How Benefit Distributions Be Paid, No Federal Common Law on the Subject Is Necessary

1. It Is Inappropriate to Fashion Federal Common Law Which Overrides the Terms of an ERISA Plan

As noted earlier, the WCT Fund presumes Petitioner and Respondents will fully brief the issue of whether Washington Revised Code Section 11.07.010 is preempted by ERISA. Accordingly, other than joining Petitioner and

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[17] A beneficiary designation is itself an instrument governing the plan. *See Metropolitan Life Ins. Co. v. Pettit*, 164 F.3d 857, 863 (4th Cir. 1998). In addition, employee benefit plans nearly universally require the distribution of benefits to either the participant or the participant's designated beneficiary.

[18] *See also, Krishna v. Colgate Palmolive Co.*, 7 F.3d 11, 16 (2nd Cir. 1993) ("It would be counterproductive to compel the Policy administrator to look beyond those designations into varying state laws regarding wills, trusts and estates, or domestic relations to determine the proper beneficiaries of Policy distributions").

other *amici* in urging that the Washington statute is preempted, the WCT Fund will not address that argument. However, the determination that the statute is preempted does not end the inquiry, as the court must determine how to treat the beneficiary designation before it. A number of courts, after finding a revocation-by-divorce statute preempted, have gone on to fashion "federal common law."[19] As discussed below, this Court need not and should not create federal common law governing the effect of a divorce upon a beneficiary designation.

It is true that federal courts can and do create federal common law to supplement federal statutory law. Moreover, Congress intended for federal courts to create a body of federal common law to govern ERISA cases. As this Court stated in *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 110 (1989):

> [W]e have held that courts are to develop a "federal common law of rights and obligations under ERISA-regulated plans." *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. at 56. See also *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1, 24, n. 26 (1983) (" 'a body of Federal substantive law will be developed by the courts to deal with issues involving rights and obligations under private welfare and pension plans' ") (quoting 129 Cong. Rec. 29942 (1974) (remarks of Sen. Javits)).

Though courts may in appropriate circumstances fashion federal common law to resolve issues arising in

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[19] *See, e.g., Hill v. A T & T Corp.*, 125 F.3d 646 (8th Cir. 1997); *Lyman Lumber Co. v. Hill*, 877 F.2d 692 (8th Cir. 1989); *John Hancock Mut. Life Ins. v. Timbo*, 67 F. Supp. 2d 413 (D.N.J. 1999); *Trustees of Iron Workers Local 451 Annuity Fund v. O'Brien*, 937 F. Supp. 346 (D. Del. 1996).

ERISA cases, it is impermissible to establish federal common law where to do so would conflict with the terms of ERISA itself. As stated in *Mertens v. Hewitt Associates*, "the authority of courts to develop a 'federal common law' under ERISA is not the authority to revise the text of the statute." 508 U.S. 248, 259 (1993) (citations omitted).

Indeed, as explained in *Nachwalter v. Christie*, 805 F.2d 956, 959-60 (11th Cir. 1986):

> The claim that Congress intended for the federal courts to create a body of federal common law to govern ERISA cases does not . . . give a federal court *carte blanche* authority to apply any prevailing state common law doctrine it chooses to ERISA cases. A federal court may create federal common law based on a federal statute's preemption of an area only where the federal statute does not expressly address the issue before the court. See C. Wright, Law of Federal Courts § 60, at 283-84 (3d. ed. 1976); see also *Textile Workers Union of America v. Lincoln Mills of Alabama*, 353 U.S. 448, 456-57, 77 S. Ct. 912, 918, 1 L. Ed. 2d 972 (1957). Furthermore, even when it is appropriate for a federal court to create federal common law, it may use state common law as the basis of the federal common law only if the state law is consistent with the policies underlying the federal statute in question; see *Lincoln Mills*, 353 U.S. at 457, 77 S. Ct. at 918; *Scott*, 754 F.2d at 1502; federal courts may not use state common law to re-write a federal statute.

An attempt to fashion a federal common law which provides for anything other than paying benefits to the designated beneficiary would effectively re-write ERISA. ERISA Section 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D), provides that a fiduciary shall discharge duties with respect

to a plan "in accordance with the documents and instruments governing the plan." Thus, ERISA explicitly instructs a plan administrator how to distribute benefits. If a plan provides that benefits are to be distributed to a beneficiary designated by a plan participant, distribution of benefits to anyone other than the designated beneficiary violates ERISA Section 404(a)(1)(D).

In *McMillan v. Parrot*, 913 F.2d 310, 311 (6th Cir. 1990), the Sixth Circuit recognized that ERISA Section 404(a)(1)(D) requires a plan administrator to comply with plan documents and beneficiary designations and, on that basis, rejected the argument that state law relating to waiver had been incorporated into federal common law. *McMillan* explained that a court must first look to ERISA itself, and only if ERISA provides no answer can a court proceed to create federal common law. *Id. McMillan* then held that ERISA provided the answer, and that resort to federal common law was therefore unnecessary:

> ERISA requires that a plan administrator discharge his duties "in accordance with the documents and instruments governing the plan. . . ." 29 U.S.C. § 1104(a)(1)(D) (1985). . . . This clear statutory command, together with the plan provisions, answer the question; the documents control, and those name [the former spouse].
>
> We believe this resolution fulfills the intent of Congress that ERISA plans be uniform in their interpretation and simple in their application. See H. Rep. No. 533, 93d Cong., 2d Sess., reprinted in 1974 U.S. Code Cong. & Admin. News 4639, 4650.

McMillan, 913 F.2d at 311-12. Accord, *Metropolitan Life Ins. Co. v. Marsh*, 119 F.3d 415, 420 (6th Cir. 1997) (ERISA Section 404(a)(1)(D) " 'establishes a clear mandate that plan administrators follow plan documents to determine

the designated beneficiary' ") (citation omitted); *Metropolitan Life Insurance Co. v. Pressley*, 82 F.3d 126, 130 (6th Cir. 1996); *see also Metropolitan Life Ins. Co. v. Hanslip*, 939 F.2d 904 (10th Cir. 1991). The WCT Fund submits that the Sixth Circuit cases properly decide this issue, and that this Court should announce that all courts faced with similar disputes should follow the rule established in *McMillan*.

However, the WCT Fund acknowledges that the *McMillan* approach is not the majority rule. Rather, while the majority of federal courts have ruled that state statutes or laws affecting the designation of a plan beneficiary are preempted by ERISA, most cases seem to follow that conclusion by fashioning federal common law. This common law generally turns on whether a designated beneficiary might have waived rights to ERISA plan benefits (based on, for example, the terms of a divorce agreement).[20] However, as shall be explained below, beyond ERISA's requirement to follow the terms of plan documents – including those relating to beneficiary designations – this Court should reject efforts to formulate federal common law that would permit overriding a plan participant's beneficiary designation.

2. A Federal Common Law Approach Is Warranted Only Where Established Common Law Principles Support a Consistent Rule

Even if one ignores the mandate of ERISA Section 404(a)(1)(D), any attempt to fashion a federal common law rule regarding the effect of a divorce on an earlier

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[20] *See, e.g., Dial v. NFL Player Supplemental Disability Plan*, 174 F.3d 606, 611 (5th Cir. 1999); *Mohamed v. Kerr*, 53 F.3d 911, 913 (8th Cir. 1995); *Brandon v. Travelers Insurance Co.*, 18 F.3d 1321, 1325 (5th Cir. 1994); *Fox Valley & Vicinity Construction Workers Pension Fund v. Brown*, 897 F.2d 275, 278 (7th Cir. 1990).

beneficiary designation must come to grips with precisely what law should be applied. As this Court stated in *Pilot Life v. Dedeaux*, 481 U.S. 41, 56 (1987), the development of a federal common law of rights and obligations under ERISA-regulated plans would make little sense "if the remedies available to ERISA participants and beneficiaries under § 502(a) could be supplemented or supplanted by varying state laws." *See also Mertens v. Hewitt Associates*, 508 U.S. 248, 264 (1993) (White, J. dissenting), ("Congress intended that the courts would look to the settled experience of the common law in giving shape to a 'federal common law of rights and obligations under ERISA-regulated plans,' " quoting *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 110 (1989)).

Here, however, there is no "settled" rule regarding how to resolve this issue. Instead, there are a multitude of varying laws, exactly what *Pilot Life* declares cannot form the basis of a federal common law. Moreover, even though numerous courts have purported to find various state statutes preempted, they have done so using a wink-and-nod preemption doctrine, using the same preempted law to form the basis for "federal common law."[21] Under such circumstances, to the extent that federal courts look to analogous state statutes to develop federal common law, irreconcilable conflicts will arise between and even within the circuits.

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[21] *See, e.g., Brandon v. Travelers Insurance Co.*, 18 F.3d 1321 (5th Cir. 1994) (Texas law preempted by ERISA but court uses the same Texas law in fashioning federal common law); *Fox Valley & Vicinity Construction Workers Pension Fund v. Brown*, 897 F.2d 275 (7th Cir. 1990), (after first stating that "ERISA preempts state pension benefit laws," court held that the district court properly fashioned federal common law based on what was characterized as "a closely analogous area of [Illinois] state law").

The Ninth Circuit faced this dilemma in *Cisneros v. Unum Life Insurance Co.*, 134 F.3d 939 (9th Cir. 1998), *cert. denied*, 526 U.S. 1086 (1999), in considering whether California's notice-prejudice rule should be adopted as federal common law in ERISA cases. *Cisneros* observed that the differences in the notice-prejudice rules of various states would make fashioning federal common law on the subject entirely unworkable:

> ERISA directs us 'to formulate a nationally uniform federal common law to supplement the explicit provisions and general policies set out in ERISA, referring to and guided by principles of state law when appropriate, but governed by the federal policies at issue.' We decline this invitation.
>
> It would appear that the federal common law we are directed to formulate must follow from preemption, not from a conclusion that the law is saved from preemption. Otherwise, laws from different states dealing with the same subject but with different results would end up in irreconcilable conflict with each other. For example, it has been brought to our attention that some States' notice-prejudice rules differ markedly from California's, some States presuming that the insurer has been prejudiced by late notice. If California's notice-prejudice rule requiring the insurer to prove actual prejudice is saved from preemption, then so would the other States' rules – but those rules would be inconsistent with any California inspired federal common law we might adopt. Moreover, which state law would prevail would depend only on which came first to the courthouse in this context. Such a result is patently untenable.

Cisneros, 134 F.3d at 947 (citations omitted). The same problem identified in *Cisneros* would plague any attempt

to fashion a federal common law rule regarding the effect of a divorce on an earlier beneficiary designation. This Court should reject any federal common law which would vary from region to region depending on what state's law was borrowed to shape the federal common law.

Simply put, ERISA expressly provides how to resolve the issue before the Court in this case and there is, therefore, no need to create or adopt federal common law on the subject.

The WCT Fund is cognizant of a number of times courts have attempted to fashion federal common law in cases addressing the effect of a divorce on an earlier beneficiary designation. However, it is submitted that those decisions have been driven more by a concern about results than by any real gap or interstice in ERISA.

In light of ERISA's mandate that benefit plans be administered according to their terms, a concern about results is not properly addressed by different courts in different jurisdictions fashioning different rules. Rather, it is the province of Congress to effect any changes to ERISA in conformance with what Congress finds is appropriate national policy. That is precisely what happened when Congress passed the Retirement Equity Act of 1984, Pub. L. No. 98-397, 98 Stat. 1426, creating a specific and narrow set of uniform rules governing Qualified Domestic Relations Orders.

Unless and until Congress amends ERISA with legislation which addresses the effect of divorce on beneficiary designations, this Court should hold that plan administrators are to administer ERISA plans and distribute benefits in accordance with the terms of the plans and their governing instruments. Such a rule furthers ERISA's goal of establishing an efficient means of administering plans, will preserve plan assets, and will still enable any

participant to be the master of who is to receive benefits upon that participant's death.

IV. CONCLUSION

For the reasons stated above, the WCT Fund respectfully urges this Court to reverse the decision of the Washington Supreme Court in the matter of *Egelhoff v. Egelhoff*.

Respectfully submitted,

RUSSELL J. REID
MICHAEL R. MCCARTHY
DAVIES ROBERTS & REID
101 Elliot Avenue West
Suite 550
Seattle, WA 98119
(206) 285-3610

ROBERT S. UNGER
Counsel of Record
CHARLES A. STORKE
NICOLE A. DILLER
JENNIFER M. PELTZ
TRUCKER ♦ HUSS, APC
120 Montgomery Street,
23rd Floor
San Francisco, CA 94104
(415) 788-3111

Counsel for the Western Conference of Teamsters Pension Trust Fund as Amicus Curiae in Support of Petitioner